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AICPA *Washington Report*

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SECURITIES AND EXCHANGE COMMISSION

Support for legislation to amend the civil provision of the Racketeer influenced Corrupt Practices Act (RICO), was expressed by SEC Chairman John S.R. Shad in testimony before the House Criminal Justice Subcommittee, House Judiciary Committee, on 10/2/85. Shad supported the provisions in H.R. 2943, a bill introduced by Rep. Frederick Boucher (D-VA) on 7/10/85. In general, the Boucher bill would require a prior criminal conviction before a plaintiff could initiate a civil suit. In his testimony, Shad stated his view that there was substantial bipartisan support within the Congress for a change in RICO's civil provisions. He also mentioned that all 13 members of Vice President Bush's Task Group on Regulation of Financial Services recommended a RICO amendment "to ensure that its civil liability provisions are not misused by private parties in litigation involving financial institutions." Shad also stated that civil RICO, as it now exists, encourages plaintiffs to bypass the Federal securities laws "which Congress, the courts and the Commission have crafted over the past 50 years." Other witnesses at this hearing included representatives from the United Coal Company of Bristol, VA, Paine Webber, Merrill Lynch, and Shearson, Lehman Brothers. Additional hearings are scheduled for Wednesday, 10/9/85.

Joseph A. Grundfest appeared at a confirmation hearing 10/2/85 before the Senate on Banking, Housing and Urban Affairs, where his nomination to be a member of the SEC met no opposition. During questioning by Banking Committee Chairman Sen. Jake Garn (R-UT), Mr. Grundfest said he supported legislation to regulate government securities dealers if it improved market performance and met cost/benefit criteria. He also noted that the SEC has been active in this area with respect to REPOs and Reverse REPOs. In addition, Mr. Grundfest defended his position, expressed in a chapter he authored in the 1985 Economic Report of the President, that even hostile takeovers are beneficial, during questioning by Sen. William Proxmire (D-WI). If confirmed, Mr. Grundfest would succeed Democrat Charles L. Marinaccio, who resigned in July; his term on the SEC would expire in June 1990. Mr. Grundfest is a former consultant to Peat, Marwick & Mitchell, an attorney and economist (see the 9/23/85 Wash. Rpt.). The Banking Committee is expected to favorably clear his nomination once he answers additional questions in writing which will be submitted to him by the Committee.

TREASURY, DEPARTMENT OF

Final regulations under the Retirement Equity Act of 1984 (REA) will change a provision of the temporary regulations under REA relating to spousal consent requirements, according to the IRS. The final regulations will permit qualified plans subject to section 417 of the Internal Revenue Code to provide that a married participant who retires may elect, without the consent of the participant's spouse, to begin receiving a qualified joint and survivor annuity before attaining the later of age 62 or normal retirement age. Employers who are in the process of amending their qualified plans to comply with REA may rely on the rule in doing so. The rule will not change any other spousal consent requirement under section 417 of the Code and the temporary regulations. Some employers and sponsors of master of prototype plans have already received favorable determination or opinion letters that their plans comply with REA. If such a plan includes a provision requiring that the participant's spouse consent to the distribution of a qualified joint and survivor annuity before the participant attains the later of age 62 or normal retirement age, that plan need not be amended if the employer or sponsor wishes to retain the requirement. However, such a plan must be amended if the employer or sponsor wishes to delete this requirement. No action need be taken with respect to approved plans that do not contain this spousal consent requirement. The temporary regulations were published in the 7/19/85 Federal Register. For further information contact the IRS Public Affairs Office at 202/566-4024.

TREASURY, DEPARTMENT OF

Registration of vehicles subject to heavy vehicle taxes will be denied by the state vehicle department unless the owners can prove their Federal use taxes have been paid, according to the IRS. The tax is due on any highway motor vehicle with a gross taxable weight of 55,000 pounds or more. This proof will usually be a copy of Schedule 1 of Form 2290, Heavy Vehicle Use Tax Return, stamped by the IRS. Form 2290 includes two copies of Schedule 1, the proof of payment. The taxpayer should complete both copies and file them with the return. The IRS will then stamp one copy of Schedule 1 and return it to the taxpayer to be presented to the state when registering the vehicle. Some alternatives are also acceptable, such as a photocopy of the Form 2290 and Schedule 1 filed with IRS, together with some evidence that the tax due was paid. A state may also issue a registration without a proof of payment under a suspension system, which permits the state to allow a vehicle owner up to four months to present proof of payment. If sufficient proof is not presented within that time, the registration is suspended automatically. For further information contact the IRS Public Affairs Office at 202/566-4024.

Changes to the Federal Tax Deposit (FTD) coupons, which taxpayers use in making advance payments of certain taxes, such as taxes withheld from an employee's wages will be changed according to the IRS. The changes result from a study by the IRS and recommendations from various tax practitioner groups on ways to improve the FTD coupon system. The IRS said that the sections of the coupons where taxpayers indicate the type of tax and calendar quarter to which the payments apply will be printed in black type instead of blue. This change is designed to draw attention to these areas because taxpayers frequently overlook reporting information causing problems with misapplied payments. The instructions for the coupon will also be changed to give specific information according to the type of tax being paid. The coupon books will include a completed form as an example of how to fill in the amount of deposit, type of tax and tax period. Taxpayers should continue to use the FTD coupons they have on hand. The coupon presently in use will be processed routinely and taxpayers will be furnished with the new coupons when reordering is necessary. The IRS cautioned that an unusually large number of requests for reorders could delay the delivery of coupons. The IRS urged taxpayers to use any existing supply of coupons following the form's instructions carefully. For further information contact the IRS Public Affairs Office at 202/566-4024.

FTD coupons and tax reform were the topics of a recent address to a tax institute by IRS Commissioner Roscoe L. Egger, Jr. He said the newly designed FTD coupon will be available after 11/1/85, but that the IRS is asking practitioners to use their old coupons first to avoid overloading the vendors with requests. Commissioner Egger said the new coupon has highlighted sections and new instructions with a graphic example to help taxpayers prepare the coupons correctly. He also said that after 1985 when an FTD penalty letter is sent to a taxpayer it will include a computer print-out of the payments received by the IRS to help eliminate confusion. The IRS is also immediately suspending the offset program, which allows a taxpayer's overpayments for one type of tax to be automatically applied to a balance due for other time periods and types of tax. Regarding public support for the President's tax proposal, Commissioner Egger said, "...The sounds of silence shouldn't be interpreted as lack of interest. The quiet is merely the sound of defeat...perhaps a belief that it is futile to hope that our elected representatives can overcome habits of the past."

Regulations regarding tax-exempt entity leasing will be the subject of a 11/25/85 IRS public hearing. The hearing is scheduled to begin at 10:00 a.m. in the IRS Auditorium, 1111 Constitution Avenue, N.W., Washington, D.C. Requests to testify and outlines of comments must be delivered to Commissioner of Internal Revenue, Attn: cc: LR: T (LR-31-85), Washington, D.C. 20224 by 11/12/85. For further information contact Faye Easley at 202/566-3935.

SPECIAL: OVERSIGHT HEARING REPORT AVAILABLE

The hearing report on the first two days of oversight hearings of the accounting profession by the House Energy and Commerce Subcommittee on Oversight and Investigations is now available to the public. The nearly 1,300 page report covers the 2/20/85 and 3/6/85 hearings at which witnesses representing the SEC, FASB, GAO and AICPA appeared. One copy of the report, Serial No. 99-17, is available per person from the House Energy and Commerce Committee, Publications Room, B334 Rayburn House Office Building, Washington, D.C. 20515.

SPECIAL: SENATE GIVES FINAL APPROVAL TO IMPUTED INTEREST BILL

Imputed interest legislation, H.R. 2475, gained final Senate approval on 10/1/85, with the Senate passing the conference report accompanying H.R. 2475 on a voice vote, clearing the bill for the President's signature. The Senate made no changes in the conference report, which was agreed to by House and Senate conferees earlier this year and passed by the House on 8/1/85 (see the 8/12/85 Wash. Rpt.). In general, H.R. 2475 stipulates that where the amount of seller-financing in a transaction is \$2.8 million or less, the test rate is the lesser of 9% or 100% of the Applicable Federal Rate (AFR). The 9% rate is not available for new property eligible for the investment tax credit. If the amount of seller-financing is more than \$2.8 million, the test rate is 100% of the AFR. The accounting method used under present law is maintained.

SPECIAL: SUBCOMMITTEE CONCERNED ABOUT POTENTIAL FCPA VIOLATIONS

The "Use of Overseas Consultants in Foreign Arms Sales", an inquiry into the hiring of a retired Korean Air Force General by five major U.S. defense contractors, was the subject of a hearing by Rep. John D. Dingell's (D-MI) Oversight and Investigations Subcommittee, Committee on Energy and Commerce, on 10/2/85. Rep. Dingell opened the hearing by summarizing his Subcommittee's responsibility and stated: "This Subcommittee has maintained a continued interest in how the Federal securities laws are being implemented. That includes the financial accounting reports and the material corporate disclosures mandated by the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act. Our inquiry into the accounting profession is, in part, a result of our concern that the disclosure system work." Witnesses for this hearing included representatives from General Dynamics, General Electric, United Technologies, LTV Aerospace, and the Martin Marietta Corporation. Rep. Dingell announced that retired Korean Air Force General, E.Y. Yoon "was requested to appear voluntarily" but that the effort "has not been satisfactory". The focus of the hearing dealt with consulting fees paid to Yoon's firm, the Buyeon Corporation. Specifically, Subcommittee members questioned the witnesses about

the services provided to them by Yoon and what could be interpreted by Yoon's practice of receiving some payments in the U.S., with a significant portion of those fees ending up in a Paris bank account. None of the representatives of defense contractors would speculate on General Yoon's motives, but all were unanimous in their view that Yoon helped facilitate their sales in Korea. They also pointed out that the U.S. Embassy in Seoul had recommended General Yoon to them. None of them had a current relationship with Yoon. Rep. Dingell and other Members of the Subcommittee expressed their view that at the least, the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, might have been circumvented by the hiring of consultants. In this regard, Rep. Dingell stated that he was sympathetic to a "change in the statute." Additional hearings are contemplated by the Subcommittee, to include representatives of the U.S. State Department.

SPECIAL: CRIME SUBCOMMITTEE EXAMINES "ROLE OF PUBLIC ACCOUNTING FIRMS"

"The Role of Public Accounting Firms in E.F. Hutton Check Kiting Scheme" was the way Rep. William Hughes (D-NJ) described the fourth in a series of oversight hearings, conducted by his Crime Subcommittee, House Judiciary Committee, on 10/3/85. Witnesses included Professor Abraham Briloff, Baruch College, CUNY, representatives from Arthur Andersen & Company and representatives from Arthur Young & Company. Professor Briloff criticized the role of Hutton's independent auditor, Arthur Andersen, for what he characterized as their decision not to follow-up on their 3/7/80 memo which raised questions about Hutton's overdrafting activities. Briloff also criticized Hutton's audit committee and those audit committees at banks which the Subcommittee has characterized as victims of the overdraft procedures, for not detecting and ending the practice. Responding to a question from Rep. Daniel Lungren (R-CA) about a possible need for additional standards for independent accountants, Briloff stated that the current standards are adequate, if enforced. In part, Arthur Andersen representatives testified that "our audits for the years 1979-1984 were performed in accordance with generally accepted auditing standards. For each of those years, the financial statements complied with generally accepted accounting principles and fairly presented the companies' financial position and results of operations -- including appropriate disclosure on the face of the balance sheet of the book overdraft amounts outstanding at the end of each year." In the question and answer session which followed, Rep. Hughes commended Arthur Andersen for alerting E.F. Hutton's management, in a 3/7/80 memo, about concerns relating to Hutton's overdraft practices. Hughes was not persuaded that Arthur Andersen had followed up their initial memo in a satisfactory manner, asking if Andersen had contacted any of the banks or if they had consulted outside counsel. Rep. Hughes also expressed reservations about Andersen's "labelling" of Hutton's overdraft activities. Hughes stated that the "average investor" would not understand "drafts and checks payable" and suggested using the term "overdraft" instead. Rep. E. Clay Shaw, Jr. (R-FL) summarized his view of the proceedings by agreeing that some Members of the Subcommittee had questioned Andersen's follow-up to their 1980 memo and that some had questioned the appropriateness of the "labelling", but Shaw also stated that "no one has attacked the figures on the financial statements -- that's the CPAs job". Representatives from Arthur Young & Company commenced their testimony by an assertion that their role has not been accurately portrayed, explaining in detail their initial retention by Hutton's outside counsel to provide litigation support services. In part, Arthur Young testified that "during the entire course of its relationship with Hutton and Cahill Gordon (Hutton's counsel), AY never served as Hutton's auditor and never conducted an audit of Hutton's cash management transactions."

For additional information contact Gina Rosasco, Shirley Hodgson or Nick Nichols
at 202/872-8190.

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